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In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. _____

THE SINCLAIR COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the First Circuit.

The Sinclair Company, petitioner herein, prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the First Circuit, entered in this case on July 3, 1968, granting enforcement of an order issued against Petitioner by the National Labor Relations Board.

OPINIONS BELOW.

The opinion of the Court of Appeals (App. A, *infra*, pp. 33-40) is reported at 397 F. 2d 157. The findings of fact, conclusions of law and order of the National Labor Relations Board are reported at 164 NLRB No. 49 (App. C, *infra*, pp. 41-78).

JURISDICTION.

The decision of the Court of Appeals was rendered on July 3, 1968 (App. A, *infra*, pp. 33-40); and its decree was entered on July 3, 1968 (App. B, *infra*, p. 41). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. § 160(e).

QUESTIONS PRESENTED.

(1) Whether the National Labor Relations Board has authority under the provisions of the National Labor Relations Act to order petitioner to bargain with a labor organization that has lost a Board-conducted secret ballot election.

(2) In the alternative, if the Board has such authority under the Act, whether petitioner was lawfully entitled to refuse to recognize the Union and to insist upon an election upon the ground that authorization cards are unreliable, and without a requirement that petitioner conduct an investigation into the authenticity of such cards *or* be relegated to a mere check of the names appearing on the cards against the names on its payroll.

(3) Whether a combination of lawful statements made by petitioner to its employees can amount to unlawful threats and coercion as a "totality," and thereby lose their protection under the First Amendment to the Constitution and under Section 8(c) of the Act, and whether such findings by the Board can be sustained by reference to Board "expertise" and the test of substantial evidence under Section 10(e) of the Act.

STATUTES INVOLVED.

The National Labor Relations Act, as amended (61 Stat. 136; 72 Stat. 945; 73 Stat. 544; 29 U.S.C. § 141 *et seq.*), insofar as is here pertinent, provides:

Section 8(c):

> "(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

Section 9(c):

> "(c)(1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board
>
> "(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or
>
> "(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);
>
> the Board shall investigate such petition and if it has reasonable cause to believe that a question of repre-

sentation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

Section 10(e):

"* * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28."

The First Amendment to the Constitution provides in pertinent part:

"Congress shall make no law * * * abridging the freedom of speech. * * *"

STATEMENT OF THE CASE.

I. THE FACTS.

A. The Union's Several and Different Recognition Demands and Unit Positions.

On July 3, 1965, the Wire Weavers Trade Division, International Brotherhood of Teamsters, commenced an organizing drive among petitioner's *Appleton* plant[1] employees (J.A. 13, 14, 176; R.A. 39b, 41b, 43b, G. C. Exs. 3, 6, 7).[2]

The Board, in its decision, and the Court of Appeals, relied upon a recognition demand made by the Union on September 20,[3] for a unit of Journeymen Wireweavers and Apprentices (R.A. 45b). Petitioner refused to recognize the Union by letter dated September 28 (R.A. 48b). This demand and petitioner's refusal was the basis for the Board's order issued herein, as though it was the only recognition demand involved. In fact, it was the *second* (2nd) recognition demand in a case which involved the receipt by petitioner of three (3) recognition demands, each for a different unit, and which involved *seven* (7) different positions on the part of the Union with respect to the unit of employees which it claimed to represent.

The *first* recognition demand and unit position was made on August 17 by a Cleveland Attorney upon another

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[1] Petitioner has plants on Appleton Street and on Park Street in Holyoke, Massachusetts.

[2] The Xerox copy of the transcript of testimony which was filed in the Court below will be referred to as J.A. ____. R.A. ____ refers to the printed Record Appendix To Respondent's Brief and B.A. ____ refers to the printed Record Appendix To Brief For Petitioner, both of which were filed in the Court below. Exhibits of the General Counsel are referred to as "G.C. Ex." and petitioner's Exhibits (Respondent in the proceedings below) are designated as "R. Ex."

[3] All dates refer to the year 1965 unless otherwise indicated.

Cleveland Attorney who, at that time, did not represent petitioner (R.A. 43b, 44b; G.C. Exs. 7, 8; J.A. 95, 98). The demand was for a unit of 87 Appleton Plant employees (R.A. 43b, 44b; G. C. Exs. 7, 8; J.A. 95, 98). At that time, eighty-seven (87) employees included everyone working for petitioner at both plants, except very top management (J.A. 94, 95, 98, 189). Petitioner rejected the recognition demand (R.A. 43b).

No further steps were taken by the Union to pursue this demand, and the Board made no attempt to establish that the Union had truthfully claimed to represent a majority of such employees.

The *second* demand and unit position, as set forth above, was for a unit of Journeymen Wireweavers *and apprentices*. For a period of thirteen (13) years prior to the demand, petitioner had employed no apprentices (J.A. 14, 15, 98, 99, 177, 190, 191, 224, 231). During this same thirteen year period, many of the skills formerly required by Journeymen Wireweavers had been eliminated (J.A. 195, 224, 225, 250). Having received two (2) consecutive claims from the Union for representation of non-existent employees, the petitioner also rejected the second demand (R.A. 48b, G.C. Ex. 11). The Union abandoned and withdrew this second demand and unit position by its third conflicting demand and unit position.

On October 11, the Union's *third* (3d) recognition demand and unit position was limited to the Appleton plant and to a unit described as weave shop, maintenance, machine shop, shipping room, finishing room, dandyroll, cylinder and water mark. In addition to the doubts engendered by a third conflicting recognition demand, petitioner believed that employees of its Park plant should also be included in the unit. It, therefore, refused this third demand (R.A. 51b; G.C. Ex. 13; J.A. 232).

The Union filed a representation petition with the Board on October 13, Case No. 1-RC-8664, for a unit consistent with its October 11 demand, except that it also requested inclusion of "part time production employees" (R. Ex. 1).

The *fourth* unit position by the Union was reflected in a Stipulation for Certification Upon Consent Election which was executed by the parties and by a Board Field Representative on November 2 (J.A. 105, 233, 234; R. Ex. 2). The bargaining unit was therein described as all "production and maintenance employees" at *both* the Appleton *and* Park plants (R. Ex. 2).

Despite this course of conduct by the Union, on November 8, six (6) days after the Stipulation was signed by the parties, over petitioner's objections, the Board's Regional Director granted the Union's telegraphic request that it be permitted to withdraw from the Stipulation without prejudice, so that it could petition for a "smaller unit" (R. Exs. 3, 5, 7). This *fifth* (5th) unit position failed in any way to define the unit. The Union made no further attempt to pursue its third demand and unit position or its fourth unit position.

The Union's *sixth* (6th) unit position was set forth in the representation petition filed on November 8 in Case No. 1-RC-8713, and was for a unit of "Apprentice and Journeymen Wire Weavers." It specifically requested the exclusion of all other Appleton and Park plant employees (G.C. Ex. 1(a)).

The Union's *seventh* and final position was set forth in a Stipulation for Certification Upon Consent Election for a unit limited to Journeymen Wire Weavers *only*. No demand for recognition was ever made by the Union for this unit.

B. Petitioner's Communications With Its Employees.

As set forth above, the Union's organizing drive commenced on July 3 by a letter to the Appleton plant employees (R.A. 39b). Shortly thereafter, employees offered Petitioner's President, David H. Sinclair, copies of the Union's communication, and he accepted one copy (J.A. 96, 175, 176).

Within a few days, President Sinclair talked to employees of the Machine Shop, Roll, Cylinder and Weaving Departments at the Appleton plant (J.A. 100, 101, 114, 218, 250, 251, 257). Only his talk to about twenty-six (26) employees of the Weaving Department (J.A. 15, 178) is involved here.[4] President Sinclair had no written speech or notes, and he talked for ten (10) to twelve (12) minutes (B.A. 8).

In his talk, President Sinclair referred to historical facts relating to petitioner's past experience with the American Wire Weavers Protective Association (AWWPA) which had now merged with the Teamsters Union (J.A. 104, 180, 192, 193).

In 1952, AWWPA called a strike of Wire Weavers which closed petitioner's plant for twelve (12) or thirteen (13) weeks. Petitioner was unable to meet the unreasonable and excessive demands of AWWPA (J.A. 179-181, 226; B.A. 6). Petitioner's plant reopened in September, 1952, on the basis of petitioner's last offer to the AWWPA (J.A. 102, 181, 223, 252, 253). Some, but not all of the Wire Weavers, returned to work (J.A. 253).

Following the 1952 strike and continuing until 1965, petitioner's financial position was precarious. In July, 1964, President Sinclair was forced to sell the business (J.A. 222, 225, 226). The Lindsay Wire Weaving Com-

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[4] Journeyman Wire Weavers constituted only fourteen (14) of the twenty-six (26) employees of that department.

pany acquired 100% of petitioner's stock, and David H. Sinclair continued as President. However, Lindsay officers made it clear that they were looking for a profit and not for a "hole to pour money down" (J.A. 103, 168, 226).[5]

In his talk, Mr. Sinclair reviewed the 1952 strike and petitioner's financial problems subsequent to that date which resulted in its sale in 1964. He discussed Lindsay's relationship with petitioner; Lindsay's insistence that petitioner make money; that he did not want to find himself in the same situation as in 1952, where a Union would make unreasonable demands that petitioner could not meet; that strikes could be caused by a Company's inability to accede to Union demands; that a strike could lead to closing the plant; that petitioner could not accede to unreasonable demands; and that the last thing he wanted was a plant that was closed down because "this was my life, too" (J.A. 141).

Following this July talk, the Union apparently believed that it was successful in its organizing attempts. It made the several claims of majority representation in August, September and October, which are set forth above. Petitioner did not communicate with its employees regarding the Union's organizing attempt during the four (4) month period from early July until November.[6] Commencing on November 2, petitioner sent eight (8) written

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[5] Subsequent to the Board's order herein, The Lindsay Wire Weaving Company sold the shares of petitioner and since that time has not had any interest in petitioner.

[6] On October 21, petitioner posted a notice to employees commenting on the Union's representation petition, then pending before the Board (R.A. 25b). During the period from July to December 9, President Sinclair asked ten of the Weavers, individually, whether they had any questions concerning the Company's position (J.A. 161, 162, 186, 187). The specific content of the discussions with some of the ten who asked questions was not litigated (B.A. 17), and the Board found it unnecessary to consider or pass on them (B.A. 19).

communications to its employees (R.A. 18b-38b; G.C. Exs. 14-19, 21); and on December 8, President Sinclair talked to the Weavers (R.A. 56b-59b; R. Ex. 20).[7]

The November 2 letter (R.A. 18b-21b) answered a number of questions concerning voting procedure, union shop and discussed job security. It stated that petitioner *would bargain in good faith*, if the Union won an election, but because of its precarious financial condition, it did not "make sense for us *to meet* unreasonable Union demands *which will result in further losses* and eventually the necessity of closing the plant."

The second letter was dated November 5 (R.A. 22b-24b). Petitioner reviewed its history, the 1952 strike and its relationship with Lindsay. President Sinclair stated that "a long strike" would be bad for him because he wanted to continue to live in Holyoke, had pride in the Sinclair name and "would like to see the plant modernized, expanded and prosper." He also stated, "No one has a right to threaten you, or coerce you to make you vote their way."

An undated handbill was distributed between the 18th and 25th of November. The 1952 strike was discussed in the handbill, together with Teamster strike policy, as evidenced by a statement by Teamster President Hoffa. Also discussed were the employees' rights in voting in the Board election and their rights in the event of a strike (R.A. 36b-38b).

A fourth letter, dated November 22, merely stated that a copy of Senator Robert Kennedy's book entitled

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[7] At the hearing it was established that authorization cards from Wire Weavers had been signed by them as follows: one (1) on July 6 (G. C. Ex. 2); three (3) on July 7 (G. C. Exs. 28, 31, 32); five (5) on July 8 (G. C. Exs. 23, 24, 26, 27, 29); and two (2) on July 9 (G. C. Exs. 25, 30; B.A. 24). It thus affirmatively appears that the authorization cards were signed following President Sinclair's July talk.

"The Enemy Within" was enclosed and suggested that employees read it (R.A. 25b).

On November 30, a fifth letter (R.A. 26b-28b) was sent. It discussed strikes and Lindsay's connection with petitioner. Among other things, it stated:

> "This Company is *not anti-union.* We *would not close the plant in retaliation for employees voting for a Union.* But this Company must show a profit, *regardless* of whether or not you select the Teamsters Union as your spokesman."

The seventh letter of December 7 (R.A. 31b-35b) discussed plants that had been closed in the Holyoke area, and pointed out that Unions had done nothing to promote sound industrial growth in the area.

The December 8 handbill severely criticized the Teamsters for using Union funds to defend James Hoffa in criminal proceedings and pointed out advantages of a vote against the Union (R.A. 35b-36b).

President Sinclair talked to the Wire Weavers on December 8. His talk was a brief recapitulation of what had already been stated in prior communications. However, he repeated that the decision was up to the employees alone and that "no one (could) threaten or coerce" them; that there were a lot more important things than who would represent them; that he would do his "level best *to keep Sinclair Co. in business and growing*"; "I'm not concerned with beating a union—I'm concerned with our future."

The election was held on December 9, and the employees voted against the Teamsters by a vote of 7 to 6. Objections to the election and charges of unfair labor practices were subsequently filed, and a Complaint was later issued.

II. THE BOARD'S DECISION AND ORDER.

The Board adopted the findings, conclusions and recommendations of the Trial Examiner, except for two modifications in the breadth of the Order. Although it had found that a question of representation existed and had conducted an election, it now ruled that the election should never have been held and ordered petitioner to bargain with the Union. Notwithstanding the First Amendment to the Constitution and Section 8(c) of the Act, it used petitioner's communications with its employees as the basis for the bargaining order. Although it found no threats, it ordered petitioner to cease and desist from threatening its employees with possible plant closure, transfer of weaving production with attendant loss of employment or with other economic reprisals if they *selected* the Union as their bargaining representative.

(A) With respect to petitioner's communications with its employees, the Board made two (2) inconsistent findings. The first, that petitioner's communications:

> "taken together and considered as a whole, reasonably tended to convey to the employees the belief or impression that *selection of the Union* in the forthcoming election *could* lead Respondent to close its plant, or to the transfer of the weaving production, with resultant loss of jobs to the wire weavers." (App. C, p. 58.)

The foregoing finding relates to a "possibility" of disadvantageous consequences as a result of selection of the Union. In its second (2d) finding, the Board piled inference upon inference in an attempt to convert the "possibility" into a "certainty," as follows:

> "But the message which the foregoing preelection campaign * * * reasonably tended to convey to the employees was that if they *selected this Union* as their bargaining representative, a strike would be inevi-

table because the Union *would* make excessive demands which Respondent *would* refuse to meet, that a strike *could* lead to the closing of the plant or the transfer of the weaving production to Lindsay's other facilities, and that the wire weavers *would* then lose their jobs and find it difficult to get other jobs because of their age and limited craft skills." (App. C, pp. 58-59.)

(B) The Board in no way explicated the basis for its findings, contenting itself with basing them upon the alleged "totality" of petitioner's communications. The findings made by the Board largely consist of statements which must be conceded, even by the Board, to be protected under the First Amendment to the Constitution. Such findings include, in their "totality," the finding that on November 22 petitioner furnished each of its employees with a copy of Senator Robert Kennedy's book, "The Enemy Within" (App. C, p. 51).

On June 16, 1967, more than a month after it issued its decision herein (App. C, p. 77), the Board, without any request by Respondent or any other party, voluntarily issued its Order Supplementing Decision and Order, which added a footnote disclaiming any reliance upon petitioner's distribution of "The Enemy Within" as "part of the totality of * * * conduct in violation of Section 8(a)(1) of the Act" (App. C, p. 78).[8]

(C) With respect to the allegations of refusal to bargain, the Board ignored all demands for recognition except the *second* demand of September 20 and ignored the proceedings in connection with the representation petition filed in October. It ruled upon the matter as though the

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[8] The Board did not rule upon petitioner's contention that its communications with its employees were protected by the First Amendment to the Constitution.

September 20 demand and the representation petition of November 8 were the only facts in the case.

The Board found that the Union's loss of support "must be found attributable to the Respondent's unfair labor practices" (App. C, p. 66) and that:

> "Respondent's refusal to bargain on and after September 20, 1965, was not motivated by any good faith doubt as to the Union's majority status in an appropriate bargaining unit but was instead motivated by a desire to gain time within which to dissipate that majority status." (App. C, p. 69.)

(D) The Board did not rule upon petitioner's contention that by reason of the changes made in Section 9(c) of the Act by the Taft-Hartley Amendments (61 Stat. 143), among other things, deleting the Board's authority to "utilize any other suitable method" to determine a bargaining representative, that the Board did not have statutory authority to order bargaining based upon a card check, after it had resolved the question of representation by means of a secret ballot election.

III. THE DECISION OF THE COURT OF APPEALS.

The Court of Appeals enforced the Board's order. It stated that the Board's order was based upon findings that petitioner threatened its employees "that unionization *would* cause them to lose their jobs" (App. A, p. 33) and that there was a refusal to bargain in violation of the Act.[9] It held that the "basic question" was whether these findings were supported by substantial evidence on the record as a whole.

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[9] The Board made no finding that petitioner threatened that unionization *"would"* cause employees to lose their jobs.

THE COURT'S DECISION WITH RESPECT TO PETITIONER'S COMMUNICATIONS.

With respect to Petitioner's communications, the Court relied upon findings which are substantially curtailed in scope from those relied upon by the Board. The Court impliedly sustained petitioner's contentions that it made no untrue statements and that its statements, considered separately, were lawful.

Although the Court mentioned the tests set forth in Section 8(c) of the Act relating to promises of benefits or threats of force or reprisal, it made no findings under those standards. Instead it turned to the language of Section 8(a)(1), which prohibits conduct by an employer:

"to interfere with, restrain *or coerce* employees * * *."

The Court held that the test in considering "coercive effect" was the "totality of the circumstances." It held that:

> "Whether an employer has used language that is *coercive in its effect* is a question essentially for the specialized experience of the Board.
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> * * * * *
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> "On the record before us we think there is *substantial evidence* to support these findings." (App. A, p. 38.)

The Court, therefore, as did the Board, applied the tests pertaining to a violation of Section 8(a)(1) of the Act and not the tests set forth in Section 8(c) thereof. Further, the Court, likewise, did not rule upon petitioner's contention that its communications were protected by the First Amendment to the Constitution, nor did the Court review the factual findings for the Board's order, as required with respect to an order restraining freedom of speech.

With respect to the refusal to bargain issue, the Court found that the Board's finding of a violation of Section 8(a)(5) and (1) of the Act was supported by substantial evidence. It ruled that a good faith doubt was not established by assertion and that it must have some reasonable or rational basis in fact.

> "Here the company made no attempt to discover what the card situation was when the union requested recognition for the wire workers unit. We therefore conclude that *the company* made no real showing of good faith doubt either as to the union's majority status or as to the appropriateness of the bargaining unit." (App. A, p. 39.)

The Court found that instead of recognizing the Union on the basis of its "admitted" card majority, that petitioner sought to gain time to dissipate the Union's majority. The Court gave no recognition to the fact that such majority was not known to petitioner until the hearing on October 4 and 5, 1966. It gave no consideration to the Union's false claim of majority representation in August and it did not consider the abandonment by the Union of its September claim by the October demand and petition, and by the execution, in November, of a Stipulation for an Election in an entirely different bargaining unit.

The Court ruled that it had rejected the proposition, in the First Circuit, that authorization cards were so unreliable that an employer has a right to reject a request for recognition based upon them; and that it was reasonable to conclude that the Union's majority had been dissipated by petitioner's unlawful interference. The Court did not discuss the effect of the Union's frequent changes of position nor did it rule upon petitioner's contention that the change made in Section 9(c) of the Act by the Taft-Hartley Amendments (61 Stat. 143) prohibited the issuance of the Board's bargaining order.

REASONS FOR GRANTING THE WRIT.

Recurring litigation has arisen under the National Labor Relations Act with respect to the exercise by employers of their rights of freedom of speech under Section 8(c) of the Act and under the First Amendment to the Constitution. Much litigation has reached the Courts of Appeals in recent years with respect to the authority of the National Labor Relations Board to issue bargaining orders following the defeat of a Union in proceedings conducted under Section 9(c) of the Act. The decisions of the Courts of Appeals are in conflict, and a decision by this Court on such questions is important in the administration of the National Labor Relations Act.

I. THE DECISION BELOW IS IN CONFLICT WITH A DECISION OF THE FOURTH CIRCUIT WITH REGARD TO THE AUTHORITY OF THE BOARD.

In *NLRB v. Logan Packing Co.*, 386 F. 2d 562 (CA-4, 1967), the Court of Appeals for the Fourth Circuit rejected the procedure followed by the Board here. The Court pointed out that "card checks" or "card counts" were utilized by the Board under the Wagner Act, which permitted the Board to use "any other suitable method" for determining a collective bargaining representative. The Court held that the present Act "provides for a secret election under Board supervision as the *exclusive method* of resolving a question of representation" (386 F. 2d at 569). It held that a bargaining order remedy was an extraordinary one and that such an order might be permissible in exceptional cases where the employer's conduct was particularly outrageous and pervasive, but found none in the case before it.

Here there was no finding, nor is there any basis for a finding of outrageous and pervasive conduct on the part

of petitioner. The evidence is to the contrary.[10] Two (2) representation petitions were filed by the Union alleging that a question of representation had arisen, and the Union twice stipulated that:

> "a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c)." (R. Ex. 2; G. C. Ex. 1(b).)

The conflict between the Fourth Circuit and the First Circuit on this issue should be resolved by this Court.

II. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THE FOURTH, FIFTH, AND SIXTH CIRCUITS WITH REGARD TO AN EMPLOYER'S DUTY TO ACCEPT AUTHORIZATION CARDS.

The Court below concluded that petitioner had not made a showing of good faith doubt concerning the Union's majority status because:

> "Here the company made no attempt to discover what the actual card situation was when the Union requested recognition for the wire workers unit." (App. A, p. 39.)

In direct conflict with this holding, Courts of Appeals in other Circuits have held that an employer carries no such burden. In *NLRB v. Sehon Stevenson & Co.*, 386 F. 2d 551 (CA-4, 1967), the Court held:

> "Because of their unreliability (authorization cards) should not be accepted as proof of the union's claim of majority status, and an employer is entitled to doubt the union's claim as long as it is so unreliably founded." (386 F. 2d, at 553.)

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[10] The Board found no *conduct* by petitioner, other than speech, in violation of the Act. The only violation found by the Board was based upon petitioner's communications.

The Fifth Circuit in *NLRB v. Dan River Mills*, 274 F. 2d 381 (CA-5, 1960), held that an employer was not required, at his peril, to engage in an investigation concerning the validity of authorization cards:

> "* * * But like Odysseus, he stands almost helpless as he makes the passage between Scylla and Charybdis. If he makes a simple inquiry to each employee and accepts the simple answer, the very pressures apprehended may well bring about the employee's confirmation as well. If he probes deeper, the inquiry unavoidably becomes an investigation and soon it is inescapable that there will be insinuations in terms of relative evaluation of union or nonunion conditions. At that point, undefined or undefinable, the inquisitor trespasses either on forbidden ground or flounders in the Serbonian bog surrounding it so that what started out to be a means of compliance with law is turned into an affirmative charge of an unfair labor practice." (274 F. 2d at 388.)

The Sixth Circuit has also ruled contrary to the decision made by the Court below. Its decision in *NLRB v. Fashion Fair, Inc.*, ____ F. 2d ____, 68 LRRM 2964 (CA-6, 1968), states specifically:

> "An employer is not obligated to submit to a card check by a neutral third party in order to preserve his claim of good faith doubt." (68 LRRM at 2967.)

And in *Lane Drug Co. v. NLRB*, 391 F. 2d 812 (CA-6, 1968), the Sixth Circuit held that:

> "The offer of a check of authorization cards does not impose a duty upon the Company to submit to the check or suffer the consequences of a refusal to bargain charge." (391 F. 2d at 820.)

The conflict between the First Circuit and the Fourth, Fifth, and Sixth Circuits on this issue should be resolved by this Court.

III. THE DECISION BELOW CONFLICTS WITH DECISIONS IN THE SECOND, FOURTH, AND SIXTH CIRCUITS WITH RESPECT TO THE RELIABILITY OF AUTHORIZATION CARDS.

The Court below held that petitioner was contending "that signed authorization cards are so unreliable that it has a right to reject a request for recognition based on them and insist upon an election. We have already rejected this proposition in this circuit." (App. A, p. 40.)

In *NLRB v. Logan Packing Co.*, 386 F. 2d 562 (CA-4, 1967), the Court stated that: "it would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check,' unless it were an employer's request for an open show of hands." The Court discussed the reasons for the unreliability of authorization cards in great detail and then concluded:

> "For such reasons, a card check is not a reliable indication of employees' wishes." (386 F. 2d at 566.)

And in *NLRB v. Fashion Fair, Inc.*, ____ F. 2d ____, 68 LRRM 2964 (CA-6, 1968), that Court held:

> "As both the Courts and the Board recognize, the use of authorization cards is a 'notoriously unreliable method of determining the majority status of a union'." (68 LRRM at 2966.)

In *NLRB v. River Togs, Inc.*, 382 F. 2d 198 (CA-2, 1967), the following appears in Footnote 10 to the decision:

> "* * * The Board itself has characterized authorization cards as a notoriously unreliable method of determining majority status of a union. Sunbeam Corp., 99 NLRB 546, 550-51, 30 LRRM 1094 (1952). Some indication of the degree of unreliability is afforded by the statistics in Chairman McCulloch's oft-cited address, A Tale of Two Cities; or Law in Action, printed in Proceedings, Section of Labor Relations Law,

American Bar Ass'n., pp. 14, 17-18 (1962)." (382 F. 2d at 206.)

The conflict between the First Circuit and the Second, Fourth and Sixth Circuits on this issue should be resolved by this Court.

IV. THE DECISION BELOW CONFLICTS WITH DECISIONS IN THE SECOND AND SIXTH CIRCUITS ON THE ISSUE OF THE BURDEN OF PROOF.

The Court below stated that petitioner had made no attempt to discover what the actual card situation was when the Union made its offer of a card check:

> "We therefore conclude that *the company made no real showing* of good faith doubt either as to the union's majority status or as to the appropriateness of the bargaining unit." (App. A, p. 39.)

The Court below improperly placed the burden of proof upon petitioner. In this regard the Sixth Circuit held in *NLRB v. Fashion Fair, Inc.*, ____ F. 2d ____, 68 LRRM 2964 (CA-6, 1968), that:

> "The burden is on the Board's General Counsel to prove that respondents did not possess a good faith doubt in refusing to bargain * * * The question to be decided is whether at the time of the refusal to recognize, the employer actually possessed a good faith doubt, the burden being on the General Counsel to prove the negative." (68 LRRM at 2966-2967.)

The Second Circuit in *NLRB v. River Togs, Inc.*, 382 F. 2d 198 (CA-2, 1967), held the following in that case:

> "* * * The Board's conclusion that respondent's refusal to bargain was not motivated by a good faith doubt—an issue on which the General Counsel has the burden of proof * * *—is not supported by substantial evidence on the record considered as a whole." (382 F. 2d at 206.)

The decision of the Court below on this issue goes beyond the decision of the Board itself. Footnote 16 to the Board's decision states:

> "* * * While the burden is on the General Counsel to establish affirmatively that a good faith doubt of majority was not the reason for respondent's refusal to bargain, there is no requirement that the complaint must contain such an allegation. John P. Serpa, Inc., 155 NLRB No. 12 (p. 2); H & W Construction Company, Inc., 161 NLRB No. 77 (pp. 6-7) * * *." (App. C, p. 70.)

The conflict between the First Circuit and the Second and Sixth Circuits on this issue should be resolved by this Court.

V. THE DECISION HEREIN IS IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AND WITH DECISIONS OF THIS COURT WITH RESPECT TO PETITIONER'S EXERCISE OF ITS CONSTITUTIONAL RIGHT OF FREEDOM OF SPEECH.

A. Petitioner's Statements to Its Employees Were Truthful, Did Not Include Any Threat of Reprisal and Were Protected by the First Amendment to the Constitution.

The Court below defined the issue as whether petitioner had "*interfered* with the organization rights of its employees by *threatening* that unionization would cause them to lose their jobs" (App. A, p. 33). The Board made two conflicting findings. The first related to the possibility that "selection of the union" in the election "could" lead to closing the plant. The second related to the alleged "certainty" that if employees "selected the Union" there "would" be a strike because of excessive demands and to the *possibility* that such demands in turn "could" lead to closing of the plant.

Neither the Board nor the Court applied the tests of Section 8(c) of the Act which provides that speech or other communications shall not constitute or be evidence of an unfair labor practice:

> "* * * if such expression contains no threat of reprisal or force * * *."[11]

There is no contention that petitioner even threatened force against its employees. Neither the Court nor the Board made any finding that petitioner threatened a *reprisal* on its part, i.e., that petitioner threatened that it (the petitioner) would take any action in retaliation against its employees if they selected the Union in the election.

Obviously, there was no basis for a finding, and the Board made none, that *petitioner* had threatened to inflict any reprisal or retaliation upon its employees.[12] Nevertheless, the Board proceeded in its Concluded Findings with respect to petitioner's communications (App. C, pp. 58, 59) to find that petitioner "interfered with, restrained and coerced" its employees in violation of Section 8(a)(1) of the Act.

The Board, therefore, applied the tests of Section 8(a)(1) of the Act in testing the legality of petitioner's communications. It failed to even consider the tests set forth in Section 8(c) and it completely ignored petitioner's contentions with respect to the applicability of the First Amendment to the Constitution.

The Board did not even attempt to challenge the truthfulness of any statement made by petitioner. No

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[11] The finding of unlawful refusal to bargain is based in its entirety upon the Board's findings with respect to petitioner's communications.

[12] Petitioner promised its employees in writing: "We would *not* close the plant in retaliation for employees voting for a Union" (R.A. 27b).

single statement was found to be unlawful or to constitute a threat of force or reprisal. The Board relied upon the so-called "totality" doctrine to sustain its *ipse dixit* pronouncements.

The Court below impliedly agreed that all of petitioner's communications, considered separately, were lawful. It did not dispute the contention that petitioner informed its employees of the facts and made no untrue statements. With respect to the contention that the combination of lawful statements could not result in illegal conduct, the Court below merely held that "The problem is not as simple as that" and held that the proper test was the "totality of the circumstances" (App. A, p. 37).

The Board and the Court, however, failed to consider the totality which included, among other things, the facts that the employees involved (1) had participated in union affairs in the past; (2) had participated in a strike caused by unreasonable demands; and (3) that petitioner's financial position was continuously precarious following that strike and even after petitioner was sold in 1964.

This Court held in *Thornhill v. Alabama*, 310 U. S. 88 (1940), that "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution" (310 U. S. at 102). More recently, in *Linn v. United Plant Guard Workers*, 383 U. S. 53 (1966) this Court stated:

> "We acknowledge that the enactment of Sec. 8(c) manifests a congressional intent to encourage free debate on issues dividing labor and management. And as we stated in another context, cases involving speech are to be considered 'against the background of a profound * * * commitment to the principle that debate * * * should be uninhibited, robust and wide

open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks'." (383 U. S. at 62, 63.)

B. The Decision Below Is in Conflict With Decisions of the Fifth, Second, Fourth, Sixth and Eighth Circuits and With Decisions by the Board Itself.

In *Siegel Co. v. NLRB*, 328 F. 2d 35 (CA-2, 1964), the Court approved a decision by the Board finding no violation of the Act when the Employer's Vice President expressed the "honest belief" that the union's organizational drive, "would if succesful, result in a reduction of the work force." (328 F. 2d at 26.)

NLRB v. W. T. Grant Co., 208 F. 2d 710 (CA-4, 1953), involved a statement by the store manager "that in the event of a strike, Grant would probably close the store and, if it continued too long, move out * * *." The Court found no violation of the Act.

The Fifth Circuit found no violation in *NLRB v. Transport Clearings, Inc.*, 311 F. 2d 519 (CA-5, 1962), in the General Manager's statement that it "might be forced out of business if the motor carriers had to pay the company the same amount to operate as it would cost them" as a result of unionization. The Court stated that this was an example:

> "* * * of a prophecy by an employer of dire results for employees that may flow solely from a union's policy or practices rather than from employer action, and is privileged under the free speech section of the Act." (311 F. 2d at 524.)

An applicable decision is *Texas Industries, Inc. v. NLRB*, 336 F. 2d 128 (CA-5, 1965). There the Company stated to employees:

> "There is only one way that a union representative can enforce his demands upon the Company. This is by calling a strike. When you strike, you will lose your wages and possibly your jobs." (336 F. 2d at 130.)

The Court there set aside the Board's finding that Section 8(a)(1) had been violated.

The Sixth Circuit in *Union Carbide Corp. v. NLRB*, 310 F. 2d 844 (CA-6, 1962), reversed the Board and found lawful a statement by the Employer there that it would no longer be the sole source of supply for certain customers if the employees became unionized. The Court stated:

> "We think the utterances of either side in an election campaign ought not to receive a narrow or strained construction." (310 F. 2d at 845.)

The decision in *NLRB v. Wilson Lumber Co.*, 355 F. 2d 426 (CA-8, 1966), involved statements as follows:

> "An economic strike could cause us to lose business. This might cause us to have to shut down the plant. If so, you would be without a job."
>
> * * * * *
>
> "In dealing with the Union I'll deal hard with it—I'll deal cold with it—I'll deal at arm's length with it." (355 F. 2d at 429.)

The Court held that the above statements were protected by the First Amendment to the Constitution and were authorized by Section 8(c) of the Act.

The conflict between the First Circuit and the Second, Fourth, Fifth, Sixth and Eighth Circuits on this issue should be resolved by this Court.

C. Board Decisions on Free Speech Issues Are Most Inconsistent. Guidance From This Court Is Therefore Required.

A leading decision by the Board with respect to free speech issues in a representation campaign is *American Greetings Corporation*, 146 NLRB 1440 (1964). Among statements which the Board found to be lawful were the following: "We strongly believe it (a Union) would do serious harm"; "We would have the right to reject any Union demands which we felt were out of line"; that the Union had called a strike because the "Union Bosses wanted to save face"; and "Do you want to *lose your job* through being replaced in one of (the Union organizer's) stupid strikes?"

On facts substantially identical with those here the Board found no violation of the Act in *Jacob Brenner Company, Inc.*, 160 NLRB 131 (1966). There the Employer stated:

> "* * * This is the same Union that ran us out of business at our Third Street plant. They called a strike that eventually resulted in *our locking the doors* and all the men *lost their jobs*, * * *. We want to stay in this business * * * and not have to *lock the doors again* because of union troubles and strikes." (160 NLRB at 136.)

The foregoing statement had greater potential of having a coercive effect than any statement made by petitioner since it related to an actual closing of the plant in the past. Still, the Board found the foregoing statement to be lawful and protected, but inconsistently, found a violation herein. This Court should establish guidelines for the guidance of counsel, the Board and the Courts of Appeals in ruling in this delicate area concerning freedom of speech.

D. A Combination of Lawful Statements Cannot Be Added Up to an Unlawful Totality.

The instant case serves as a prime example of unbridled administrative fiat where the Board wrongfully seeks, under the color of "expertise," to declare in a most general way that a "series" of communications by petitioner were unlawful, without ever explicating, by objective fact finding, the rational basis for its decision.

No statement made by petitioner was found to be unlawful. No statement made by petitioner was found to be untruthful. Still, the Board found a violation of Section 8(a)(1) of the Act based upon the alleged "totality" of such communications as supposedly having a certain effect upon employees.

In this respect the Board's pronouncements constitute a subterfuge to remove all restrictions upon "expertise" and to macerate the concept that the burden of proof must be borne by the General Counsel.

In *NLRB v. Virginia Electric & Power Co.*, 314 U. S. 469 (1941) this Court approved consideration of the totality of the Company's activities, i.e., its speeches to employees and its other conduct. However, in *NLRB v. Exchange Parts Co.*, 375 U. S. 405 (1964) this Court disclaimed any reliance upon "words of the respondent dissociated from its conduct" because of the provisions of Section 8(c) of the Act, which was added to the Act *subsequent* to this Court's decision in *Virginia Electric & Power, supra.*

Here, however, petitioner engaged in no other conduct which was found to violate the Act. The violation found by the Board and by the Court below consists solely of petitioner's "words" which the Board found, without explanation, to violate the Act in their "totality."

This Court should review this finding of the Board to provide proper guidance to the Courts below and to the Board to prevent infringement of the exercise by employers of their right of freedom of speech.

E. Free Speech Questions May Not Properly Be Left to Board "Expertise" Nor Does the "Substantial Evidence" Test Control.

The Court below held that the proper test for determining the legality of petitioner's communications was the "totality of the circumstances" (App. A, p. 37). The Court then deferred to the Board's "expertise" and held that the Board's findings were supported by "substantial evidence." [13]

Application of these standards by the Court below does not conform with decisions of this Court with respect to issues involving freedom of speech.

In *Wood v. Georgia*, 370 U.S. 375 (1962), this Court stated:

> "But state courts may not preclude us from our responsibility to examine 'the evidence to see whether it furnishes a rational basis for the characterizations put on it' * * * by the enunciation of a constitutionally acceptable standard in describing the effect of the conduct. The ultimate responsibility to define the limits of state power regarding freedom of speech and expression rests with this Court * * * and

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[13] Petitioner's counter-statement of questions involved to the Court below, included the following: "Were Respondent's communications to its employees lawful and protected by Section 8(c) of the Act and by the First Amendment to the Constitution, and could they be properly found by the Board as being violative of Section 8(a)(1) of the Act, and could they properly be used by the Board for the further purpose of showing a lack of good faith doubt of the Union's claimed majority and also as evidence that Respondent allegedly sought time to dissipate such majority?"

> when it is claimed that such liberties have been abridged, we cannot allow a presumption of validity of the exercise of state power to interfere with our close examination of the substantive claim presented." (370 U.S. at 386.)

As here, in that case the Court below did not indicate in any manner how the conclusions arrived at were supported by the evidence in the record.

In *Speiser v. Randall*, 357 U.S. 513 (1958), this Court pointed out the danger that legitimate utterances would be penalized by the generality of standards applied. This Court pointed out that the deterrence of speech which the Constitution makes free cannot be accomplished:

> "* * * indirectly by the creation of a statutory presumption any more than * * * by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions." (357 U.S. at 526.)

And in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), this Court dealt with that problem in still another context and again held that the power to create presumptions was not a means of escaping constitutional limitations (376 U.S. at 284). This Court further held that its duty was not limited to the elaboration of constitutional principles, but included the duty of reviewing the evidence to make certain that such principles had been constitutionally applied:

> "We must 'make an independent examination of the whole record' * * * so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." (376 U.S. at 285.)

Here the Court of Appeals completely failed in its duty to make an independent examination of the whole

record. It based its decree enforcing the Board's order upon its finding that there was "substantial evidence" to support the Board's findings and upon the Board's "expertise." In this regard, it improperly gave effect to a legislative presumption which cannot be a means of escape from constitutional limitations. Also, the decision of the Court below is in conflict with decisions of other circuits in this regard.

The Sixth Circuit held in *NLRB v. Hobart Bros. Co.*, 372 F. 2d 203 (CA-6, 1967):

> "Further, the construction of a writing is *not* the special expertise of the Board. Rather, it is for the Courts which have more experience and competence in construing and interpreting written instruments. * * * Our holding simply is that the Board's construction of a writing is not sacrosanct and that we have the right, if not the duty, to correct an impermissible and unfounded inference drawn therefrom." (372 F. 2d at 206.)

The Eighth Circuit did not defer to the Board's expertise in *NLRB v. Wilson Lumber Co.*, 355 F. 2d 426 (CA-8, 1966). It found the employer's statements there to be protected by Section 8(c) and by the First Amendment to the Constitution and stated that they:

> "were improperly interpreted by * * * the Board as a basis for authorizing an unfavorable inference." (355 F. 2d at 432.)

In *NLRB v. TRW—Semiconductors, Inc.*, 385 F. 2d 753 (CA-9, 1967), the Court freely reviewed and denied enforcement of the findings of the Board with respect to the alleged coercive effect of the employer's communications.

The exercise of Constitutional rights cannot be made dependent upon Board "expertise," nor can the exercise

of such rights be made dependent upon the substantiality of evidence under Section 10(e) of the Act.

This Court should establish the constitutional principles that are applicable to free speech issues which are litigated before the Board and should resolve the conflict between the First Circuit and the Sixth, Eighth and Ninth Circuits on this issue.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

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APPENDIX A.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

(July 3, 1968.)

McENTEE, *Circuit Judge*. This is a petition for enforcement of a Labor Board order issued against the respondent, The Sinclair Company. The order is based on findings that the company interfered with the organizational rights of its employees by threatening that unionization would cause them to lose their jobs and also that the company refused to bargain with the union as the representative of its employees in violation of § 8(a) (1) and (5) of the National Labor Relations Act.[1] The basic question is whether on the record as a whole these findings are supported by substantial evidence. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474 (1951).

The respondent company, whose main plant is in Holyoke, Massachusetts, was founded in 1925. It was acquired by Lindsay Wire Weaving Company of Cleveland, Ohio, in 1964 and is now a division of Lindsay. David Sinclair, son of the founder and the central figure in this litigation, continued as president under the new regime.

Briefly, the company's labor relations background is as follows. From 1933 to 1952 its journeymen and apprentice wire weavers were represented by a union known as the American Wire Weavers Protective Association. (A.W.W.P.A.) This relationship terminated in 1952 after A.W.W.P.A. called a strike that lasted some thirteen weeks. From 1952 to 1965 the employees were not represented by any union.

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[1] Accordingly, the Board ordered the company to cease and desist from its unfair labor practices, to bargain upon request, with the union as the authorized representative of its wire weavers, and to post appropriate notices.

Early in July 1965[2] the Teamsters Union began organizing the employees.[3] By letter dated September 20, Teamsters Local 404 notified the company that it represented a majority of its journeymen wire weavers and apprentices; requested that the company bargain with it and made the usual offer to submit the signed authorization cards for authentication.[4] The company refused to recognize the union. Local 404 filed a representation petition. The parties stipulated to a Board conducted election among the wire weavers and said election was held on December 9. With a total of thirteen ballots cast the union lost by a vote of seven to six. Thereupon it petitioned the Board to set aside the election and filed the unfair labor practice charges here involved. Adopting the findings of the trial examiner, the Board set aside the election and entered an unfair labor practice order. The issue revolves around the pre-election conduct of the company's president.

In July when Sinclair learned of the union's efforts he immediately addressed the employees in separate groups, with the view to dissuading them from joining the union.[5]

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[2] All dates hereinafter mentioned, unless otherwise indicated, to the year 1965.

[3] Sometime between 1952 and 1965 A.W.W.P.A. merged or affiliated with the Teamsters Union.

[4] At that time the union had authorization cards from eleven of the company's fourteen journeymen wire weavers. There were no apprentices.

[5] He reminded them, particularly the wire weavers, that the last union had a long strike that almost put the company out of business, and that the company has been on "thin ice" ever since. Sinclair also told them that "A strike could lead to the closing of the plant." Continuing in this vein he indicated that wire weaving offered only limited job opportunities and in view of their age and lack of education, new jobs would be hard to get. He then proceeded to down-grade the Teamsters Union and concluded by saying that in merging with Lindsay the company had been given a second chance but that Lindsay didn't need the company's wire cloth production and in the event of a strike could satisfy its needs elsewhere.

On November 2, and again on November 5, he sent them letters vigorously opposing the union.[6]

We now come to the period directly involved in the Board's findings.[7] Two or three weeks before the scheduled election, Sinclair embarked upon an intensive campaign to induce the wire weavers to reject the union. His first message consisted of a letter or pamphlet illustrated with drawings and entitled "Who Would Buy The Groceries * * * While You Walk The Teamsters Picket Line?" Its dominant theme was "Do You Want Another 13-Week Strike?"[8] Among other things, the pamphlet emphasized that the union has but one weapon—a strike; that the Teamsters Union is a "strike happy outfit"; that it can again close the wire weaving department and the entire plant by a strike and that only the striking employees and the company, not the union organizers, would be hurt. On November 30 he followed up with a similar letter to the wire weavers reminding them again of the

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[6] In the first of these letters Sinclair indicated that employees who signed cards could still vote against the union. He also told them that nothing the Teamsters or any other union could offer would increase their job security and ended with the warning that the company was still on "thin ice" and that it didn't make sense for the company to meet unreasonable union demands which could result in further losses "and eventually the closing of the plant."

The November 5 letter reviewed the poor earnings history of the company; stated that the new ownership was interested in "profits and not pressure"; that the Teamsters Union can only deliver pressure—the threat of a strike; that the new management had no ties in Holyoke or Massachusetts and he "did not believe the threat of a strike will cause the new owners any loss of sleep" but "a long strike would be bad for me because I would like to continue to live in Holyoke."

[7] While the Board took into account the company's prior conduct as background, its findings were based on the company's activities during the period from November 8, when the instant representation petition was filed, and December 9, the date the election was held.

[8] A majority of the wire weavers had participated in the 1952 strike.

disastrous effects of the long 1952 strike on both the company and the employees. He also stated that "a strike can still close the Holyoke plant." The very next day (December 1) Sinclair sent the wire weavers a third communication containing more of the same, listing the misdeeds of several top Teamsters officials, denouncing the union and its tactics and urging the wire weavers to vote "No" in the election.

Next came a four page leaflet dated December 7, entitled "Let's Look At The Record" and illustrated with a cartoon. This leaflet purported to be an obituary of the companies in the Holyoke-Springfield area that allegedly had fallen victim to union demands and had gone out of business, eliminating some 3500 jobs in the area. The leaflet concluded by suggesting that the wire weavers drive past these plants before making their decision to vote for the union. The day before the election another handbill entitled "Vote Right—Avoid Strikes" was passed out by the company. In graphic form it set out several supposedly beneficial effects of voting "No" in the election and ended with a scathing attack on high Teamsters officials and the union itself. That same afternoon the president personally addressed the wire weavers in a final appeal to reject the union. Again he mentioned union corruption and reminded his hearers of the company's precarious financial condition. In his closing plea, Sinclair again told the wire weavers of the unlikelihood of their obtaining other employment because of their age and limited education. It also appears that Sinclair talked personally to about ten of the fourteen wire weavers between July and December 9 in an effort to persuade them not to vote for the union.

An employer violates § 8(a) (1) of the Act if in communicating with his employees during a union organiza-

tional campaign preceding an election he makes promises of benefits, threats of loss, or reprisal for their vote. *Wausau Steel Corp. v. N.L.R.B.*, 377 F.2d 369, 372 (7th Cir. 1967). The respondent defends on the ground that in making the pre-election statements above mentioned it was merely informing its employees of the facts; that it made no untrue statements; that these statements considered separately are lawful and this being so, the combination of them could not result in illegal conduct. The problem is not as simple as that. Conveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact, unless, which is most improbable, the eventuality of closing is capable of proof. The employer's prediction must be in terms of demonstrable "economic consequences." *Surprenant Mfg. Co. v. N.L.R.B.*, 341 F.2d 756, 761 (6th Cir. 1965). Moreover, in considering coercive effect the test is the totality of the circumstances. *N.L.R.B. v. Kolmar Laboratories, Inc.*, 387 F.2d 833, 837 (7th Cir. 1967). *Daniel Construction Co. v. N.L.R.B.*, 341 F.2d 805 (4th Cir.), *cert. denied*, 382 U.S. 831 (1965); *N.L.R.B. v. Wagner Iron Works*, 220 F.2d 126, 139 (7th Cir. 1955), *cert. denied*, 350 U.S. 981 (1956).

As stated in *N.L.R.B. v. Kropp Forge Co.*, 178 F.2d 822, 828-29 (7th Cir. 1949), *cert. denied*, 340 U.S. 810 (1950):

> "A statement * * * might seem * * * perfectly innocent * * *, including neither a threat nor a promise. But, when the same statement is made by an employer to his employees, and we consider the relation of the parties, the surrounding circumstances, related statements and events and the background of the employer's actions, we may find that the statement is a part of a general pattern which discloses action by the employer so coercive as to entirely destroy his

> employees' freedom of choice and action. * * * If, when so considered, such statements form a part of a general pattern or course of conduct which constitutes coercion and deprives the employees of their free choice guaranteed by Section 7, such statements must still be considered as a basis for a finding of unfair labor practice."

It is evident that Sinclair's communications were designed to impress upon the wire weavers (1) that the 1952 strike had left the company in a state of continuing financial difficulty; (2) that the union's only weapon is a strike and the Teamsters Union is a "strike happy outfit"; (3) that another strike could, and in his opinion would, close the plant and (4) that it would be difficult for the wire weavers because of their age and limited education to secure other employment. Whether an employer has used language that is coercive in its effect is a question essentially for the specialized experience of the Board. *Daniel Construction Co. v. N.L.R.B., supra.* The Board found

> "that the series of letters, pamphlets, leaflets, and speeches from and by President Sinclair, hereinabove described, taken together and considered as a whole, reasonably tended to convey to the employees the belief or impression that selection of the Union in the forthcoming election could lead Respondent to close its plant, or to the transfer of the weaving production, with the resultant loss of jobs to the wire weavers."

The Board also found that the aforesaid conduct interfered with the employees' exercise of a free and untrammeled choice in the election.[9]

On the record before us we think there is substantial evidence to support these findings. Also, it is clear that under the circumstances the company must take the re-

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[9] See n. 7.

sponsibility for the pre-election conduct of its president. *Daniel Construction Co. v. N.L.R.B., supra.* In *N.L.R.B. v. Freeport Marble & Tile Co.*, 367 F. 2d 371 (1st Cir. 1966), we held that respondent having made threats of economic consequences to its business in case of unionization has the burden of proving justification. The company has not met its burden here.

Also, we think the Board's finding that in refusing to bargain with the union the respondent violated § 8(a)(5) and (1) of the Act is supported by substantial evidence. The company contends that it refused to recognize and bargain with the union for the following reasons: (1) that it had a good faith doubt that Teamsters Local 404 represented an uncoerced majority of the weaving department employees; (2) that authorization cards are an unreliable means for determining the union's majority status, and (3) that it expected there would be questions concerning the appropriate bargaining unit which should be determined by the Board. In its consent to the election respondent agreed that the wire weavers group constituted an appropriate unit. Furthermore, the company does not dispute that on September 20 when Local 404 requested recognition for this group it had valid authorization cards for at least ten of the fourteen wire weavers. A good faith doubt is not established merely by assertion but must have some reasonable or rational basis in fact. *N.L.R.B. v. Superior Sales, Inc.*, 366 F. 2d 229, 237 (8th Cir. 1966). Here the company made no attempt to discover what the actual card situation was when the union requested recognition for the wire workers unit. We therefore conclude that the company made no real showing of good faith doubt either as to the union's majority status or as to the appropriateness of the bargaining unit. Instead of recognizing the union on the basis of its admitted card majority

the company insisted on an election—as the Board found, in order to gain time in which to dissipate the union's majority. In view of the company's unlawful interference with the employees' rights during the pre-election campaign, we think the Board acted within its discretion in setting aside the election and in ordering the company to bargain. *N.L.R. B. v. Southbridge Sheet Metal Works, Inc.*, 380 F. 2d 851 (1st Cir. 1967).

Actually what the company is contending here is that signed authorization cards are so unreliable that it has a right to reject a request for recognition based on them and insist upon an election. We have already rejected this proposition in this circuit. *N.L.R.B. v. Whitelight Products*, 298 F. 2d 12 (1st Cir.), *cert. denied*, 369 U. S. 887 (1962). See *N.L.R.B. v. Southbridge Sheet Metal Works, Inc., supra.* The representation status of a union may be shown by means other than an election. *Mine Workers v. Arkansas Flooring Co.*, 351 U. S. 62, 71-72 (1956).

In the instant case there is undisputed evidence of the union's majority status long prior to the election. It is reasonable to conclude that this status was dissipated by the company's unlawful interference with the employees' Section 7 rights, thus tainting the December 9 election. In these circumstances we think the Board was warranted in entering a bargaining order rather than ordering a new election. *Wausau Steel Corp. v. N.L.R.B., supra.*

Finally, we see no merit in the company's contention that the Board's order is invalid in that it fails to specify the conduct it purports to proscribe.

The order will be enforced.

APPENDIX B.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

(July 3, 1968.)

This cause came on to be heard upon Petition for Enforcement of an Order of the National Labor Relations Board, and was argued by Counsel.

Upon consideration whereof, it is now here ordered, adjudged, and decreed as follows: The Order of the National Labor Relations Board of May 2, 1967, is hereby affirmed and enforced.

APPENDIX C.

TRIAL EXAMINER'S DECISION.

STATEMENT OF THE CASE.

This proceeding, involving consolidated cases, was heard before Trial Examiner Louis Libbin at Springfield, Massachusetts, on October 4 and 5, 1966, pursuant to due notice. The complaint in Case No. 1-CA-5266, issued on July 22, 1966, pursuant to charges filed by the Union, named in the caption, on December 14, 1965, alleges, in substance, that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act, (1) by refusing at all time after September 20, 1965, upon request, to bargain collectively with the Union which was the exclusive bargaining representative of the employees in a designated appropriate unit, and (2) by engaging in various specified acts of interference, restraint, and coercion. Respondent's duly filed answers denies the unfair labor practice allegations and asserts certain affirmative defenses. Case No.

1-RC-8713 arises out of a representation election conducted by the Board on December 9, 1965, timely objections to the election filed by the Union on December 14, 1965, and timely exceptions filed by the Union on February 2, 1966, to the Regional Director's Report on Objections. The Board, on March 8, 1966, ordered that a hearing be held to resolve the issues raised by the Union's objections and exceptions.

For the reasons hereinafter indicated, I find that Respondent violated Section 8(a)(1) and (5) of the Act, that there is merit to some of the Union's objections, and that the election should be set aside. Upon the entire record[1] in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT.

I. THE BUSINESS OF THE RESPONDENT.

Respondent, The Sinclair Company, is a Massachusetts corporation with its principal place of business in Holyoke, Massachusetts, where it is engaged in the manufacture, sale and distribution of paper mill rolls, wires, and related products. Respondent receives materials, annually

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[1] I hereby note and correct the following obvious errors in the typewritten transcript of testimony:

Page	*Line*	*Change*	*To*
78	21	66	65
95	11	to	the
102	15	or	of
102	16	wekk	well
105	11	we	were
108	5	along	a long
111	15	buy	but
112	7	copies	companies
113	14	into	in to
116	7	this	thin
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valued in excess of $50,000, at its Holyoke plant directly from points outside the Commonwealth of Massachusetts; it also ships products, having an annual value in excess of $50,000, from its Holyoke plant to points outside the Commonwealth of Massachusetts.

Upon the above admitted facts, I find, as Respondent admits in its answer, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED.

The complaint alleges, the answer admits, the record shows, and I find, that General Teamsters, Chauffeurs, Warehousemen & Helpers, Building Materials, Heavy & Highway Construction Employees, Local No. 404, an affiliate of International Brotherhood of Teamsters, the Charging Party herein called the Union or Local 404, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES AND OBJECTION TO ELECTION.

A. Introduction; the Issues.

The Union began organizing Respondent's employees in July 1965.[2] By letter dated September 20, the Union informed Respondent that it represented a majority of Respondent's journeyman wire weavers and apprentices, and requested recognition and a meeting to negotiate a collective-bargaining agreement. At that time, the Union had signed authorization cards from 11 of Respondent's 14 journeymen wire weavers. The Respondent employed no

[2] Unless otherwise indicated, all dates hereinafter mentioned are in the year 1965.

apprentices. By reply letter dated September 28, Respondent refused the Union's request for recognition on the asserted grounds that it doubted the Union's claimed majority status, the appropriateness of the unit, and the reliability of authorization cards to prove majority status. Upon the filing of a representation petition by the Union on November 8, the Board, pursuant to a consent election agreement, conducted an election among Respondent's journeymen wire weavers on December 9; of the 13 ballots cast among the 14 eligible voters, the Union was defeated by a vote of 7 to 6. Meanwhile, during the period from July up to and including the day before the election, Respondent's President Sinclair addressed the employees through a series of speeches, letters, pamphlets, and individual talks, to induce them to reject the Union as their collective-bargaining representative.

The principal issues in this case are (1) whether the speeches, letters, pamphlets, and individual talks of President Sinclair, either separately, or in their totality, constituted interference, restraint and coercion violative of Section 8(a)(1) of the Act;[3] (2) whether, by so much of the foregoing conduct which occurred after the filing of the representation petition, the Respondent interfered with the employees' exercise of a free choice in the election of December 9 so as to warrant setting aside the election; and (3) whether Respondent's refusal to bargain with the Union was motivated by a good-faith doubt with respect to the requested unit and the Union's majority status therein.

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[3] Also in issue is whether Respondent violated Section 8(a)(1) of the Act by the conduct of Superintendent William Seavey, an admitted supervisor, in allegedly attempting to cause the South Hadley American Legion Post to deny the use of its meeting hall to Respondent's employees for a union organizational meeting.

B. BACKGROUND.

The Sinclair Company was founded by President David H. Sinclair's father in 1925. From 1933 until 1952, the American Wire Weavers Protective Association, herein sometimes called the AWWPA, represented Respondent's journeymen wire weavers and apprentices and had contracts covering this unit on a national basis. President David Sinclair began working for Respondent on a full time basis in 1947, and, until 1952, was Respondent's representative in the contract negotiations with AWWPA for the journeymen and apprentice wire weavers, which negotiations were held on an industry-wide basis in Cleveland and New York. In 1952, Respondent's plant was closed for about 12 or 13 weeks as a result of a strike called by AWWPA. The strike terminated in September 1952, when the plant was reopened without a union contract on the basis of Respondent's last offer to the AWWPA. Respondent had no further dealings with AWWPA which thereafter "faded out" and no longer represented any of Respondent's employees. From the termination of the strike in 1952 until the Union began its organizational efforts in July 1965, Respondent's employees were not represented by any union.

In 1963, Respondent opened a weaving plant in Florence, Mississippi, which was known as the Sinclair Wire Works. Gary Brunault, a member of the Union's employee organizing committee in July 1965 but no longer employed by Respondent at the time of the instant hearing, testified that sometime in the summer of 1963 he went to President David Sinclair's office and asked for a raise, that Sinclair stated that the Company could not afford one, that Brunault stated that the good thing about a union is that you could negotiate for a raise with power, and that Sinclair replied that there would not be a union at Re-

spondent's plant so long as he was president and that if Brunault did not like the conditions he knew where the door was. President Sinclair remembered an occasion about that time when Brunault asked for a raise; he testified that he told Brunault that there was nothing he could do about it at that time, and specifically denied having made the other statements attributed to him by Brunault. Although Brunault testified that the conversation lasted about 20 minutes, he could not remember anything else that was said. President Sinclair impressed me as a forthright and candid witness. I was not favorably impressed by Brunault. Under all the circumstances, I do not credit Brunault's disputed testimony and credit Sinclair's denials.

In 1964, the Lindsay Wire Weaving Company of Cleveland, Ohio, herein sometimes called Lindsay, acquired 100 percent of the stock of Respondent, which then became a Division of Lindsay. Respondent's Florence, Mississippi, plant at that time also became part of the Lindsay operation which, in addition, consisted of plants in Cleveland and Mentor, Ohio. However, David Sinclair continued as, and still is, president of Respondent.

C. Interference, Restraint, and Coercion.

President Sinclair first learned of the Union's organizational campaign in the early part of July when he was informed by some employees, and was given a copy, of the leaflet and attached authorization card mailed to the homes of employees. From that time until the day of the election, President Sinclair, through a series of speeches, letters, pamphlets, and talks with individual employees, engaged in a campaign to induce the employees to reject the Union as their collective-bargaining representative.

1. The facts.[4]

(a) *The July speech.*

Early in July President Sinclair talked to all the employees in separate groups concerning the Union's organizational drive. He had no written speech and used no notes. His speech to the wire weaving group, which lasted about 10 to 12 minutes, is the only one concerning which Sinclair testified as follows:

When he talked to the weaving department, which included the wire weavers, he told them that he was "going to be blunt" with them because he knew that the union organizing campaign started in their department. He told them that "I was disappointed" that they were considering getting a union into the plant "because they had union experience, that the last union [with which] we had had dealings in our wire weaving group had a strike of a good many weeks duration and that most of the people there could well remember that had almost put our company out of business at that point and that I was disappointed to see that some of what I considered to be lessons of the past weren't living with them any more." He spoke of the Company's financial condition, indicating that ever since the last strike the shop has been running on "thin ice"; pointed out that "strikes were initiated by unions" and not "by any act of the Company"; emphasized that if the Company could not agree to the Union's demands, "the union's only weapon is a strike"; and pointed out that, while he did not intend to close, a strike "could lead to the closing of the plant." Sinclair also told the group that the wire weavers craft was a small one, that it would be difficult for

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[4] Unless otherwise indicated, the factual findings in this section are based on evidence which is either admitted or undisputed.

them to find other jobs because it was not like finding a job as a machinist, that many of them did not have the education, which would make it difficult for them to find another job, and that many of them were getting too old to go out and find new jobs.

He further told the men that he did not have a great deal of respect for the Teamsters, that he had read a great deal about their leadership, and that this was not the kind of an organization that he would like to deal with. He also stated that "there were inequities in our method of compensating or paying the weaving shop," that he had been concerned with this for a long time, that "if I was involved with negotiations I would certainly correct this," and that "by correcting these it would mean that I would negotiate down in the instance where these things would correct themselves in that direction as well as up in other directions."

He told the group that "we had basically been given a second chance in the chance to grow through our merger with Lindsay," that "we had to earn our own way," and that he "hoped that we would be able to reach a point where we would put in new and more modern equipment than we had to make everyone's job better, but that certainly the Lindsay Company was not going to pour money into this if we were not making a profit." He also told them that "we had a very sad experience with a union before, which they knew of, and that he did not want to get into the position" where the Union would strike the Company when it could not meet the Union's demands, with the resultant possibility of the plant closing, adding that the last thing he wanted was a closed plant.

Sinclair further told the group that he did not feel that Lindsay needed the production equipment in Respondent's weaving department to meet the total needs for wire

cloth of the entire organization, that he did not think "the Lindsay organization was going to be concerned" if "through contract negotiations with a union our people went on strike," that a strike could close Respondent's plant and nothing would prevent Lindsay from having Respondent's weaving work done at Lindsay's plant in Ohio or Mississippi. He also stated that Respondent was subject to foreign competition and that it was conceivable that if the plant was closed, under any circumstances, that some of the work would go to foreign companies and that Respondent had handled foreign wires in the past. He pointed out that all they had to do was to look around Holyoke if they thought a strike could not close Respondent's plant.[5]

(b) *The November 2 letter*

On November 2, President Sinclair mailed to all employees a letter bearing that date and addressed "To All Employees." The letter informed the employees that the pending Labor Board election "raises a number of ques-

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[5] The above findings are based on the credited testimony of President Sinclair. Richard Bougie, the only other witness who testified to the content of Sinclair's speech, testified as a witness for the General Counsel that Sinclair also stated during the course of his talk that "if we attempted to bring in a union at this time that Lindsay was sure to close," and that "if he was instructed to negotiate a contract he would negotiate down and not up." Sinclair denied having made these statements. With respect to the first statement, Bougie testified that he was "reasonably sure" that Sinclair said it; he then added that it was "probably not in those words." He either did not know or could not "recall" what Sinclair said on most of the other subjects. Although the General Counsel called as witnesses 10 of the weavers who were employed at the time of Sinclair's speech, he adduced no testimony from them or from any other witness in corroboration of Bougie in this respect. Under all the circumstances, I am convinced that Bougie's testimony merely reflects his impression of what Sinclair said; I do not credit Bougie's testimony that Sinclair in fact made the above statements attributed to him, and credit Sinclair's denials in this respect.

tions which should be answered." Then, in answer to hypothetical questions raised by Sinclair, the letter states, among other things, that "there is nothing that the Teamsters or any other Union can offer you which will in any way increase your job security under the circumstances existing at this plant" (page 2), "We are still on 'thin ice,'" and that "it just doesn't make sense for us to meet unreasonable Union demands which will result in further losses and eventually the necessity of closing the plant" (page 3).

(c) *The November 5 letter*

This letter from President Sinclair is dated November 5 and is also addressed "To All Employees." President Sinclair testified that this letter was mailed to all employees on that date or a few days thereafter. In this letter Sinclair reviewed the Company's "poor earnings history," and emphasized that the "new ownership is interested in profits and not pressure. They have no ties with Holyoke or Massachusetts. If a dollar invested here can't earn as much as a dollar invested in Mississippi or Ohio, or somewhere else, you can be sure that their dollars are going to go where they can earn the most pennies" (page 2). Contrasting what the Union would do, he stated that "the Teamsters Union promises you a lot, but what can they deliver except pressure—the threat of a strike?" He then stated that "I do not believe the threat of a strike will cause the new owners any loss of sleep. However, a long strike would be bad for me because I would like to remain in Holyoke. I have pride in the Sinclair family and would like to see the plant modernized, expanded and prosper" (page 2).

(d) *The November 22 letter and book entitled, "The Enemy Within"*

By a covering letter dated November 22 and addressed "To All Employees," Sinclair enclosed "a copy of the book written by Senator Bob Kennedy entitled, 'The Enemy Within' "; informed the employees that "this book is the experience of Senator Kennedy when he was Attorney General of the United States and investigating racketeering aspects of the labor movement in the United States"; and urged them to "take the time to read it."

(e) *The undated November pamphlet*

It was stipulated that this pamphlet was sent by President Sinclair, as it is addressed, "To ALL WIRE WEAVERS" about 2 to 3 weeks before the December 9 election.

Page one shows a Teamster picket in front of the Respondent's plant with the question "Who would buy the Groceries * * * while you walk the Teamsters picket line?" A heading in bold red letters on page two asks, "Do you want another 13-week strike?" Another paragraph on page two has the underscored heading *"No changes at this time,"* and states:

> During a union organizing campaign an employer is prohibited by law from making any changes in wages or other benefits which could induce any employee to change his mind on how he will vote. Because of this rule, we are unable to discuss wages with other groups of our employees whom the Union does not wish to represent at this time.

Other paragraphs on page two point out that "the Union has only one weapon with which it can try to make good its big campaign promises to the Wire Weavers. That weapon is a strike. We had a 13-week strike in the Wire Weaving Department in the early 1950's. The Wire Weav-

ing Department was closed * * * We have no doubt that the Teamsters Union can again close the Wire Weaving Department and the entire plant by a strike. We have no hopes that the Teamsters Union Bosses will not call a strike * * * The Teamsters Union is a strike happy outfit * * * Unions sometimes call strikes as a 'face-saving' gesture."

On page three there appear the statements that "you have an equal right to refuse to strike and to come through the Union's picket line. This might be very rough for a while. The Teamsters Union is notorious for its picket line violence." Following these remarks is a cartoon showing Respondent's plant closed down with a "Sinclair" flag flying at half mast and the statement in red letters next to the cartoon, "The 'Closedest' Closed Shop In Town."

Towards the end of page three, the Respondent states that the Teamsters Union Organizers "obviously" cannot make good on their promises, and asks, "how long a strike can you afford?" This appears near a cartoon of a "closed shop worker" with his empty pocket labeled "IBT Was Here."

The entire last page contains the admonition, in bold red and black letters, to "VOTE RIGHT AVOID STRIKES," followed by an X in a square with the word "No" over the square.

(f) *The November 30 letter*

In this letter, addressed to "ALL WIRE WEAVERS," President Sinclair again reminds the employees of the long strike 15 years ago when Respondent was "virtually out of business" and the plant was "reopened on a non-union basis." He then warns that "a strike can still close the Holyoke plant, but other plants can pick up the work," and that the new ownership "is interested in profits and not pressure." He then points out that the "Teamster Union"

cannot do anything "to improve our profit position," but can only make "big" demands "which the Company cannot meet" and then "call you out on strike" because "a strike is a Union's only weapon" to enforce its "big" demands. He then asks, "can you afford a long strike" "when you know the Holyoke plant has been given a second chance to stay in business and furnish jobs for all of us?"

(g) *The December 1 letter*

In the December 1 letter, addressed "To ALL WIRE WEAVERS," Sinclair devotes three pages to informing the employees that the Teamsters Union is involved with "serious crimes," "racketeering," "hoodlum domination," "shocking misdeeds," "goon squads," "threats to run down children," and "unlawful acts." He then warns that "if the Teamsters Union wins this election, it will be very difficult for you to get another election to vote it out." He then concludes with the admonition that "A *'No'* vote is a vote *against* surrendering your rights to the Bosses of the 'Hoodlum saturated' Teamsters Union" while "A 'yes' vote is a vote to become a part of them."

(h) *The December 7 letter*

This is a four page letter or handbill, dated December 1, from President Sinclair "To ALL WIRE WEAVERS," and entitled "LET'S LOOK AT THE RECORD." The first page contains a large cartoon, showing that certain named companies lie buried in a graveyard with the Teamster Union about to bury the Sinclair Company. The letter opens with the statement that "the Holyoke-Springfield industrial graveyard is filled with Companies which died under union pressure," and warns that before deciding how to vote in the December 9 election "every WIRE WEAVER in this plant

would find it profitable to visit a few of the sites of once prosperous companies in the Holyoke area." Page two lists the names of companies which closed down, with number of jobs lost, and points out that "these companies needed higher production and better quality to meet stiffer competition. The 'union doctor' gave them bloodletting strikes, restricted production and higher labor costs. The result, as you can see as you look around you, was the death of these companies." Sinclair then states in part, that "whatever your feelings about unions may be, these facts exist! Factories are gone! Jobs are gone!" (Page 2). He asks, "what facts do you have which would lead you to believe that a hoodlum dominated union, like the Teamsters, can give you real job opportunity at the Sinclair Company?" (Page 2). He then warns that "against a background such as ours, your dreams of 'union miracles' can be dangerous to your real job security," and urges that "before making your decision, drive past a few of the vacant plants where business died," assuring that "it will not be a pleasant drive but it could be a very informative one for you" (page 3). At the bottom of page 3, in bold black letters, appears the slogan, "VOTE RIGHT, AVOID STRIKES," with an X in a square and the word "no" over the square.

Page four contains the names and pictures of five plants which closed down, with statements such as: "Remember When These Plants FURNISHED Jobs To Area People?" * * * "Unions Furnished No Job Security Here!" * * * "Death Along The River" * * * "So Quiet Today."

Sinclair admitted at the instant hearing that he had no objective basis for stating that a union had anything to do with the closing of these plants.

(i) *The December 8 leaflet*

The parties stipulated that this leaflet was handed out to the unit employees (wire weavers) on December 8 by President Sinclair at a company meeting. One side of this leaflet refers to the convictions of Teamsters International officials and to the "Hoodlum" and "Racketeer" domination of the Union. The other side repeats the slogan to "VOTE RIGHT, AVOID STRIKES" and enumerates what a "No" vote will do, such as "never called a strike" and "never cost you a single day's pay" or "a cent of your paycheck." It concludes with the indication that a "No" vote will "protect yourself" and "protect your family."

(j) *The December 8 speech*

President Sinclair delivered a speech to the unit employees (wire weavers) at 1:30 p.m. on December 8, in the presence of the weave shop foreman. This time he talked from notes which he had before him. Many of the things he said were admittedly a repetition of what he had previously stated in his July speech. He opened his speech by referring to the corruption in the Teamsters and the conviction of some of its officials. Among the statements admittedly made by Sinclair were, in substance, the following:

The Lindsay Company has made it clear that they want to make a profit in Holyoke at Sinclair and will not sink a bundle of money in Sinclair "for the fun of it"; if the Sinclair Company does not make a profit on its own, there was nothing to prevent Lindsay from having the work done at its facilities in Mississippi or Ohio; we have been operating on "thin ice"; the Teamsters Union can only demand higher wages and expensive welfare and pension plans which could lead to even larger losses, and can call you out on strike; we could not accede to unrea-

sonable demands; the Union's only weapon is a strike; a strike could lead to the closing of the plant; the weaving production at Sinclair was not a necessity to the success of the total operation of the Lindsay organization because Lindsay had other facilities where the material could be woven; he did not think the Lindsay organization was going to be concerned about the threat of a strike; we were still subject to foreign competition and it was perfectly conceivable, if under any circumstances the plant should close, that some of this work could go to the foreign wire companies; we had to handle foreign wires in the past; the Teamsters cannot guarantee you another job if the plant should close because of a strike; it made no difference to the Teamsters whether or not Sinclair stayed in business; the Teamsters might feel that other companies with whom they had contracts would pick up our lost business; "they don't care which sheep they shear so long as they get the wool"; "it makes a lot of difference to me who is working"; I "want my job and I suppose that you want your job"; the wire weavers had a skilled trade which had limited use; "we are all Jack Benny's," with no one admitting that he is getting older; some of the wire weavers were over 60 years old, which is a difficult time in life to start over again; "most companies probably have a large number of applicants who are younger and better experienced," with "a lot better insurance rating," who "could be hired for less money"; "I am giving you the facts today and by my mailings previously"; "I am not concerned with beating a union," but "I am concerned with our future."

At the end of his talk, he asked if any of the employees would like to ask questions. No questions were asked.[6]

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[6] The findings concerning the December 8 speech are based entirely on Sinclair's testimony and Respondent's Exhibit No. 20.

(k) *Individual employee talks*

President Sinclair admitted that during the period from July to the date of the election on December 9, he talked to about 10 of the 14 wire weavers in the unit, individually, in the weave shop where they worked. He admitted that on these occasions he told the individual employee that he would like to talk to him about the Union, asked if the employee had any questions concerning President Sinclair's position and the Company's feeling about the matter, and stated that he would answer any such questions if he could. Some of the employees asked questions which he attempted to answer. These questions "included some of the matters that were in my talk to the group in July."

The record contains the specific content of only one of these conversations. In the latter part of September or the first part of October, after Sinclair had been informed by the Union in a letter dated September 24 that Richard Bougie, a wire weaver, was appointed a member of the Union organizing committee, President Sinclair came to Bougie's work place and asked what Bougie expected to get out of the Union, adding that "I realize that you are sold on this idea and I am here to try to unsell you." Bougie replied that he would like to see job security, seniority rights, and possibly a pension plan. Sinclair mentioned the things he liked such as a health and accident plan, stated how much these things would cost, and explained that he could not afford them.[7]

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[7] The findings as to this conversation are based on the credited testimony of Bougie. Sinclair did not deny Bougie's testimony in this regard.

2. Concluding Findings.

I am convinced and find that the series of letters, pamphlets, leaflets, and speeches from and by President Sinclair, hereinabove described, taken together and considered as a whole, reasonably tended to convey to the employees the belief or impression that selection of the Union in the forthcoming election could lead Respondent to close its plant, or to the transfer of the weaving production, with the resultant loss of jobs to the wire weavers. I reach the same conclusion and make the same finding based only on the totality of so much of the foregoing as occurred after November 8, the date on which the Union filed its representation petition, particularly when considered in the light of the letters and speech which preceded that date as background.[8] By the foregoing conduct, Respondent in each case interfered with, restrained, and coerced the employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.[9]

Sinclair admitted that his company had made a small profit in 1965, that the Charging Union in this case, Local No. 404, had never made any demands at all upon Respondent, and that he had no basis for concluding that this Local or its leaders were in any way connected with racketeering or hoodlums or picket line violence. But the message which the foregoing preelection campaign, even after November 8, reasonably tended to convey to the employees was that if they selected this Union as their

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[8] Cf. *Dee's of New Jersey, Inc.*, 161 NLRB No. 18.

[9] See, e.g. *Miller-Charles & Co.*, 146 NLRB 405, affd. 341 F. 2d 870 (C.A. 2); *Harvey Aluminum*, 156 NLRB No. 115; *Suprenant Mfg. Co.*, 144 NLRB 507, 510-511, enfd. 341 F. 2d 756, 761 (C.A. 6); *Ideal Baking Company*, 143 NLRB 546; and *Kolmar Laboratories, Inc.*, 159 NLRB No. 74, and cases cited in footnote 3.

bargaining representative, a strike would be inevitable because the Union would make excessive demands which Respondent would refuse to meet, that a strike could lead to the closing of the plant or the transfer of the weaving production to Lindsay's other facilities, and that the wire weavers would then lose their jobs and find it difficult to get other jobs because of their age and limited craft skills.

The General Counsel further contends in his brief that certain specific statements in the July speech and subsequent letters and the individual talks with the 10 unit employees, each independently constituted a violation of Section 8(a)(1) of the Act. In view of my previous findings concerning Respondent's violation of Section 8(a)(1), I deem it unnecessary to consider and to pass upon these contentions.

D. The Allegation Concerning the Rental of the American Legion Hall

Paragraph 14(c) of the complaint alleges: "Respondent, by its supervisor and agent, William Seavey, during the month of November 1965 or the first part of December 1965, in the Holyoke or South Hadley, Massachusetts area, attempted to cause the officers and/or managing agents of the American Legion Post organization not to allow its employees to use the American Legion Post facilities located at South Hadley, Massachusetts for the purpose of holding a union organizational meeting, and said Legion Post has officers and members who are employees of the Respondent, in order to interfere with, restrain and coerce the employees in the exercise of their rights guaranteed in Section 7 of the Act."

William Seavey is employed by Respondent as superintendent of the Machine Division and is admitted to be a supervisor and agent of Respondent. During the past 10

years, Seavey has been a member of the American Legion Post 260, headquartered in a building owned by the Legion Post and located about one-half to three quarters of a mile from Respondent's plant. At one time or another, Seavey has held every position with the Legion Post; in November 1965, he was the Chaplain, a member of the Board of Directors, and the President of the Board of Trustees.

Seavey has been a member of the Board of Directors since the time when he was the moving force in the purchases of the Legion Post building in 1959 or 1960. During his stewardship and because of his efforts, the membership of the Post had risen to 176 but had fallen to 140 or 150 in November 1965. Seven of the members were employed by Respondent, including Post Commander Nadeau and President Sinclair.

The top floor of the Legion building is rented from time to time to other organizations, and was regularly rented for the monthly meetings of labor organizations which represented employees at two area companies. Although this hall was never rented by Respondent, a going away party for two of Respondent's employees was held there in 1963, attended by Seavey and President Sinclair, and a retirement party for one of Respondent's employees was held there in 1965, attended by President Seavey. Respondent has an Employee Association which takes care of this type of function.

During the time material herein, the manager of the building was Harold Geisler, who was also on the Board of Directors but was not an employee of Respondent. The steward was Richard Meta, who was also employed there as the bartender. The Board of Directors consisted of 14 members. There are two Trustees who have the authority with respect to the upkeep and maintenance of the building. When a question arises regarding the use of the

building, the Board of Trustees will meet and pass upon it. Either a member will leave a note for the Manager regarding a proposed rental or the Manager can arrange the rental. The Board of Trustees acts officially in rental matters only when a problem arises, and this does not occur in more than one case out of a hundred.

In November 1965, Post Commander Nadeau, who was employed by Respondent as a truckdriver, asked Seavey if he knew that Respondent's employees were attempting to rent the Legion Hall for a union organizing meeting. It was Nadeau's practice to request Seavey's opinion on all matters pertaining to American Legion business. Seavey replied that he had heard about it but had not heard anything official. Nadeau asked Seavey what he thought about it. Seavey replied that he "didn't like it," stating that President Sinclair and five other employees of Sinclair were members of the Post and that he "didn't think it was right."

A few weeks later, Seavey was approached by two members of the Legion Post's Board of Directors, Geissler and Petri, concerning the hall rental for the proposed union meeting. Geissler was also the manager of the Legion Post. Seavey stated that he would rather not discuss the matter at the bar, and they moved to an adjoining room. The bartender or steward informed them that "one of the boys" gave him a $10 down payment for the use of the hall. All three expressed surprise, and this was the first time Seavey obtained any real information about the matter. Geissler and Petri asked Seavey how he felt about it. Seavey replied that he didn't like it, that there would be conflict with members that were in the shop, that the Legion had worked hard for members, that he had tried to build the Post up and that he had brought seven members in from Sinclair, that he didn't want to

use the Legion Hall as grounds for an argument, and that he would prefer that the meeting be held somewhere else, on neutral grounds.

No meeting of the Board of Directors or of the Trustees was held; nor did Seavey request such a meeting, although he was a member of both Boards. Seavey gave no instructions to the Steward or to the Manager concerning this matter; nor did he mention it to President Sinclair or any other agent or supervisor of Respondent. However, as a result of this matter involving the rental of the hall to Respondent's employees for union organizational meetings, Seavey resigned as president of the Board of Trustees before his term had expired.

Upon consideration of all the foregoing, I find that Respondent did not violate Section 8(a)(1) of the Act by the above-described conduct of Superintendent Seavey.

E. Objections to Election.

An election was conducted by the Board in a unit of Respondent's journeymen wire weavers on December 9, 1965. As previously noted, the Union lost the election by a vote of 7 to 6. Thereafter, timely objections and exceptions were filed by the Union, and the hearings ordered by the Board was for the purpose of resolving the issues raised thereby. The hearing was consolidated with the hearing in the unfair labor practice case.

It is well settled that the Board will consider only conduct which occurred after the date of the filing of the petition as a basis for objections to an election.[10] In this case, the petition was filed on November 8, 1965. As I have previously found, the series of letters, pamphlets, and leaflets, and the December 8 speech, from and by

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[10] *Goodyear Tire & Rubber Co.*, 138 NLRB 453.

President Sinclair after November 8, taken together and considered as a whole, particularly in the light of his letters and speech which preceded that date as background, violated Section 8(a)(1) of the Act because they reasonably tended to convey to the wire weavers the belief or impression that selection of the Union in the forthcoming election could lead Respondent to close its plant, or to the transfer of the weaving production, with the resultant loss of jobs to the wire weavers. I further find that the aforementioned conduct also interfered with the exercise of a free and untrammeled choice in the election involved here. See *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786-1787. Accordingly, I find that the Respondent's conduct deprived the employees of their right to express a free choice in the election. I therefore find merit in, and sustain the, objections numbered 1, 2, and duplicate 2, and recommend that the election of December 9, 1965, be set aside.

Moreover, assuming, *arguendo*, that Respondent's above-described conduct is not found to be violative of Section 8(a)(1) of the Act, I nevertheless recommend setting the election aside. It is clear that Respondent's entire pre-election campaign after November 8 generated an atmosphere of fear of economic loss which completely polluted the free atmosphere which is indispensable to a valid election and tended to foreclose the possibility that the election issues will be decided on the basis of the employees' judgment as to whether the Union will be able to represent them effectively in light of existing economic conditions.[11]

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[11] See e.g., *Ideal Baking Company*, 143 NLRB 546, 553; *General Industries Electronics Co.*, NLRB 428; and *Brunswick Corp.*, 147 NLRB 1139.

F. The Refusal to Bargain.

1. The appropriate unit and the Union's majority status therein.

The complaint alleges, the answer admits, and I find, that all journeymen wire weavers of Respondent employed at its Holyoke, Massachusetts, plant, exclusive of all other employees, all production and maintenance employees, service employees, office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The parties stipulated to the names of the employees in the appropriate unit at all material times herein, which consisted of a total of 14 employees; they further stipulated that the same 14 named employees were the only ones employed in the unit by Respondent during the period from July 6 through December 9, 1965. The General Counsel introduced into evidence Union authorization cards signed in July 1965, by 11 of the 14 employees in the appropriate unit. At the hearing, but no longer mentioned in his brief, counsel for Respondent objected to the cards signed by Gary Brunault, Victor Goulet, and William Dean. He affirmatively stated that he had no objections to the cards signed by the other eight employees, thus conceding that in July, 1965, the Union had valid authorization cards signed by a majority of the employees in the appropriate unit.

The objection to the card signed by *Brunault* was on the alleged ground that the date was not properly authenticated. His cards bears the date of 7-20-65. Brunault credibly testified that he received the Union card at his home by mail about July 6 or 7, 1965, that he filled it out and signed it at home but did not date it, that he then put it in his shirt pocket and later mailed it when he

got to a mailbox. He further credibly testified that to the best of his recollection it was July 8 when he filled it out and signed it. The card bears a United States postal stamp of July 9. Brunault explained that someone must have put the date on the card after it was received by the Union. I find that Brunault signed the card between July 6 and 9, 1965, and that this is a valid authorization card for the purpose of determining the Union's representative status.

The objection to the card signed by *Goulet* was on the alleged ground that Goulet could not testify positively concerning the facts in connection with the card. Goulet credibly testified that he signed the card on July 7, and that he filled it out himself, including the date. I find no merit in Respondent's objection, and find this to be a valid authorization card for the purpose of determining the Union's representative status.

The objection to the card signed by *Dean* was on the ground that he allegedly did not voluntarily mail the card or deliver it to the Union. Dean credibly testified that he received the card in the mail, that he signed it at home, that he had read it before signing it, that he then placed it on his bureau because he wanted to think it over for "a little while," and that the next day his wife told him that she had his son mail it. He further credibly testified that, although he had not authorized his wife to mail it, he did nothing thereafter to try to get his card back or to revoke his authorization. I find this card to be a valid authorization card for the purpose of determining the Union's representative status.

It thus appears that a clear majority of the employees in an appropriate unit had validly designated the Union as their bargaining representative when the Union made its demand on September 20, 1965, for recognition and bargaining. While a Board election is normally the best

method of determining whether or not employees desire to be represented by a bargaining agent, where, as here, an employer engages in unfair labor practices which make impossible the holding of a free election, there is no alternative but to look to the signed authorization cards as the only available proof of the choice employees would have absent the employer's unfair labor practices.[12] To the extent that the election revealed a loss of Union support, such loss must be found attributable to the Respondent's unfair labor practices. I find that at all times on and after September 20, 1965, the Union has represented a majority of the employees within the appropriate unit and has been, and still is, the exclusive representative of all the employees within said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

2. The request and refusal.

By letter dated September 20, 1965, from Union President Carmin Napoli and addressed to Respondent's President Sinclair, the Union advised that "the majority of your journeymen-wireweavers and apprentices at your Holyoke, Massachusetts, location have designated this Local Union, an affiliate of the International Brotherhood of Teamsters, as their collective bargaining representative"; requested "recognition as the exclusive bargaining representative of the aforementioned Employees" and a "meeting, as soon as possible, for the purpose of negotiating a collective bargaining agreement covering wages, hours and other conditions of employment"; and offered "to submit signed authorization cards of your Employees to a neutral party, mutually agreed upon, and to allow the

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[12] *Bryant Chucking Grinder Company*, 160 NLRB No. 125 (pp. 5-6).

third party to compare these cards with your present payroll" if "you have any doubt as to our representing a majority of your employees in the above described bargaining unit." The letter concluded with the statement that "we would appreciate hearing from you on this matter at your earliest convenience." President Sinclair admitted receiving this letter and replying by a letter dated September 28, 1965. The reply letter acknowledged receipt of the above-described letter of the Union; stated that "your request for recognition is denied (a) because the Company has a good-faith doubt that Local 404 of the International Brotherhood of Teamsters represents an uncoerced majority of its weaving department employees, (b) because as stated by NLRB Chairman McCullough, authorization cards are unreliable as a means for determining a Union's majority status, and (c) because the Company expects that there will be questions concerning the appropriate bargaining unit which should be determined by the Board"; and suggested "that Local 404 follow the election procedures established by the Board." The Union admitted receiving this letter.

3. Respondent's contentions and concluding findings.

Sinclair testified that "I was not at all sure that they represented a majority of the employees because I didn't actually know exactly what they were talking about as far as bargaining unit is concerned." He further testified that he was questioning the appropriateness of the requested bargaining unit of journeymen wire weavers and apprentices because "we had no apprentices at that time" and "I did not know what was meant by an apprentice." I find this argument to be specious. Sinclair very well knew what an apprentice wire weaver was. He admitted that Respondent had in the past employed wire weaver appren-

tices, that it had not been unusual for a wire weaving department to employ both journeymen and wire weaver apprentices, that the only union which ever represented any of Respondent's employees represented the journeymen wire weavers and apprentices, and that many of the journeymen wire weavers employed by Respondent during the period from July through December had started as apprentices and had served their apprentice years with Respondent. He further admitted that the helpers employed in the weaving department "to assist the weavers in the various operations of setting up and removing cloth" are not apprentices. Sinclair admittedly made no effort to ascertain to whom the Union was referring by the category of apprentices. He knew that he had no apprentices in his employ at that time and that there were only 14 journeymen wire weavers employed. In the latter part of November, Respondent entered into a stipulation that its journeymen wire weavers constituted an appropriate unit. I find that Respondent did not have any good-faith doubt as to the composition of the bargaining unit which the Union claimed to represent[13] or that such unit was appropriate for collective bargaining purposes even if Respondent at that time employed no apprentices. Moreover, a good-faith, but erroneous, belief that a unit is inappropriate is no defense to a refusal to bargain.[14]

As previously noted, the Union's bargaining request of September 20 and the representation petition which it filed on November 8, covered a unit of journeyman wire weavers and apprentices. However, as Respondent em-

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[13] See, e.g., *Ivy Hill Lithograph Co.*, 121 NLRB 831, 835.

[14] *Tom Thumb Stores, Inc.*, 123 NLRB No. 833; *United Butchers Abattoir, Inc.*, 123 NLRB 946, 957; *Southern Paint Co., Inc.*, 156 NLRB No. 2 and cases there cited; and *Owego Street Supermarkets, Inc.*, 159 NLRB No. 139.

ployed no apprentices, the stipulation which the parties executed in the latter part of November and the instant complaint covers a unit only of journeyman wire weavers as an appropriate unit. Counsel for Respondent contends in his brief that there was no bargaining request in a unit confined solely to journeyman wire weavers and that there is a fatal variance between the unit requested and the unit for which it is alleged Respondent unlawfully refused to bargain. I find no merit in this contention. I find that there is no substantial variance in the units and that the Union's bargaining request was a valid request for bargaining in the unit to which the parties subsequently stipulated and herein found appropriate.[15]

Nor do I find any merit in Respondent's contention that it had a good-faith doubt of the Union's majority representation claim. Sinclair testified that this doubt was based on his "personal feeling." As previously found, after the Union's bargaining request, Respondent engaged in a coercive course of conduct designed to induce the employees to abandon their support for the Union and which dissipated the Union's majority status and prevented a free choice in the subsequent election. Such conduct gives rise to the inference, which I herein make, that Respondent's refusal to bargain on and after September 20, 1965, was not motivated by any good-faith doubt as to the Union's majority status in an appropriate bargaining unit but was instead motivated by a desire to gain time within which to dissipate that majority status. *Joy Silk Mills, Inc. v. N.L.R.B.*, 185 F.2d 732, 737, 741 (C.A.D.C.), cert.

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[15] See e.g. *Edwards Fields, Inc.*, 141 NLRB 1182, 1195; *Mid-West Towel & Linen Service, Inc.*, 143 NLRB 744, 752; *Sabin Vending Co., Inc.*, 147 NLRB 1010, 1011; *Hamilton Plastic Molding Co.*, 135 NLRB 371, 373; *Galloway Mfg. Corp.*, 136 NLRB 405; *Gotham Shoe Mfg. Co.*, 149 NLRB 862, 873; and *Fleming & Sons of Colorado, Inc.*, 147 NLRB 1271, 1273.

denied 341 U.S. 914. By such refusal, Respondent violated Section 8(a)(5) and (1) of the Act.[16]

IV: THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW.

1. All journeymen wire weavers of Respondent employed at its Holyoke, Massachusetts, plant, exclusive of all other employees, all production and maintenance employees, service employees, office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times on and after September 20, 1965, the Union has been, and still is, the exclusive representative of all the employees within said appropriate unit for the

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[16] I find no merit in the procedural contention of counsel for Respondent that the 8(a)(5) allegation in the complaint is defective because it fails to contain an affirmative allegation that Respondent did not have a good-faith doubt of the Union's majority status when it refused its request for recognition and bargaining. While the burden is on the General Counsel to establish affirmatively that a good-faith doubt of majority was not the reason for Respondent's refusal to bargain, there is no requirement that the complaint must contain such an allegation. *John P. Serpa, Inc.*, 155 NLRB No. 12 (p. 2); *H. & W. Construction Company, Inc.*, 161 NLRB No. 77 (pp. 6-7). As found in the text, the General Counsel has satisfied his burden in this case.

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, within the meaning of Section 9(a) of the Act.

3. By refusing to recognize and bargain with General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy & Highway Construction Employees, Local No. 404, an affiliate of International Brotherhood of Teamsters, as the exclusive representative of the employees in the above-described appropriate unit, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By the foregoing conduct and by threatening employees with the possible closing of the plant or the transfer of the weaving production, with the attendant loss of employment for the wire weavers, if they were to select the above-named labor organization as their collective bargaining representative, in the manner described in section C, *supra*, the Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY.

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that Respondent refused to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act, I will recommend that, upon request, Respondent recognize and bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. Moreover, I would recommend the same bargaining order even if the record had warranted the conclusion, contended for by Respondent, that it relied on a *bona fide* doubt of the Union's majority in refusing to bargain with the Union. As previously found, the Union represented a clear majority of the journeymen wire weavers when Respondent began its unlawful campaign directed at destroying that majority. To the extent that the election revealed a loss of union support thereafter, such loss must be found attributable to the Respondent's unfair labor practices. Therefore, effectuation of the policies of the Act would still require such a bargaining order in order properly to remedy Respondent's other unfair labor practices herein found.[17]

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER.

Respondent, The Sinclair Company, Holyoke, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

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[17] *Bryant Chucking Grinder Company*, 160 NLRB No. 125 (pp. 5-6).

(a) Refusing to recognize and bargain collectively with General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy & Highway Construction Employees, Local No. 404, an affiliate of International Brotherhood of Teamsters, as the exclusive representative of its employees in the following appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

> All journeymen wire weavers of The Sinclair Company employed at its Holyoke, Massachusetts, plant, exclusive of all other employees, all production and maintenance employees, service employees, guards and all supervisors as defined in Section 2(11) of the Act.

(b) Threatening the employees with the possible closing of the plant or the transfer of the weaving production, with the attendant loss of employment, or with any other economic reprisals, if they were to select the above-named, or any other, labor organization as their collective-bargaining representative.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with the above-named labor organization as the exclusive representative of the employees in the above-described unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Post at its plant in Holyoke, Massachusetts, copies of the notice attached hereto and marked Appen-

dix A.[18] Copies of said notice to be furnished by the Regional Director for the First Region, shall upon being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other materials.

(c) Notify the said Regional Director in writing, within 20 days from the date of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.[19]

I also recommend that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

I further recommend that the election in Case No. 1-RC-8713, held on December 9, 1965, be set aside.

Dated at Washington, D. C., January 12, 1967.

(s) LOUIS LIBBIN
LOUIS LIBBIN
Trial Examiner

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[18] If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

[19] If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the First Region, in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE
NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the policies of the
NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

WE WILL NOT threaten our employees with the possible closing of the plant or the transfer of the weaving production, with the attendant loss of employment, or with any other economic reprisals, if they were to select GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BUILDING MATERIALS, HEAVY & HIGHWAY CONSTRUCTION EMPLOYEES, LOCAL NO. 404, AN AFFILIATE OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL, upon request, recognize and bargain collectively with the above-named Union as the exclusive representative of all employees in the following appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

All journeymen wire weavers employed at our Holyoke, Massachusetts, plant, exclusive of all other employees, all production and maintenance

employees, service employees, guards and all supervisors as defined in Section 2(11) of the Act.

THE SINCLAIR COMPANY
(*Employer*)

Dated _____ By _____
(*Representative*) (*Title*)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 20th Floor, John F. Kennedy Federal Building, Cambridge and New Sudbury Sts., Boston, Mass. (Tel. No. 223-3353).

DECISION AND ORDER.

On January 12, 1967, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the Respondent filed exceptions, with a supporting brief, and the General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error

was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions, the briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the modification set out below.

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and orders that the Respondent, The Sinclair Company, Holyoke, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete the word "other" from paragraph 1(c) of the Trial Examiner's Recommended Order, and substitute therefor the words "like or related. * * *".

2. Delete the word "other" from the paragraph beginning "WE WILL NOT in any other manner" in Appendix A attached to the Trial Examiner's Decision, and substitute therefor the words "like or related. * * *"

IT IS FURTHER ORDERED that the petition for certification of representative filed in Case No. 1-RC-8713 be, and it hereby is, dismissed, and that all prior proceedings held thereunder be, and they hereby are, vacated.

Dated, Washington, D. C., May 2, 1967.

FRANK W. MCCULLOCH, *Chairman*
GERALD A. BROWN, *Member*
HOWARD JENKINS, JR., *Member*
NATIONAL LABOR RELATIONS BOARD

[SEAL]

ORDER SUPPLEMENTING DECISION AND ORDER.

On May 2, 1967, the Board issued a Decision and Order[1] in the above-entitled proceeding.

IT IS HEREBY ORDERED that the said Decision and Order be, and it hereby is, supplemented as follows:

(1) By adding footnote reference 1 following the word "findings" on the fifth line of the third paragraph of page 1.

(2) By adding the following footnote at the bottom of page 1:

> [1] Contrary to the assertion made by the Respondent, we do not read the Trial Examiner's decision as relying on the distribution of the book "The Enemy Within" as a part of the totality of the Respondent's conduct in violation of Section 8(a)(1) of the Act. In any event, we would not find the distribution unlawful in itself or in context, either as a violation of Section 8(a)(1) or as grounds for setting aside the election.

IT IS FURTHER ORDERED that the Decision and Order, as printed, shall appear as hereby supplemented.

Dated, Washington, D. C., June 16, 1967.

By direction of the Board:

OGDEN W. FIELDS,
Executive Secretary.

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[1] 164 NLRB No. 49.